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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (PSG)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN ARISTA'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Judge: Hon. Beth Labson Freeman

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. ("Cisco"). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Arista Network, Inc.'s ("Arista") Administrative Motion to File Under Seal Confidential Information in connection with Arista's Motion for Partial Summary Judgment ("Motion."). Dkt. 328. I make this declaration in accordance with Civil Local Rule 79-5(d)(1)(A) on behalf of Cisco to confirm that the information contained in the documents referenced in the Sealing Motion should be sealed.

3. Civil Local Rule 79-5 requires that a party seeking sealing "establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law" (i.e., is "sealable"). Civil L.R. 79-5(b). The sealing request must also "be narrowly tailored to seek sealing only of sealable material." *Id.*

4. As a Motion for Partial Summary Judgment, Arista's Motion is considered to be dispositive. In this context, materials may be sealed so long as the party seeking sealing provides "compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-1179 (9th Cir.2006). Compelling reasons for sealing court files generally exist when such "'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). Under this standard, compelling reasons have been found to seal documents such as those containing confidential source code (*Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d

1 1001, 1017 (E.D. Cal. 2011)); documents related to the “internal procedures for addressing
 2 cardholder fraud notifications” of a bank, *id.* at *2-3 (*Cowan v. GE Capital Retail Bank*, No. 13–
 3 cv–03935–BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015)); documents containing
 4 “information about [a party’s] business performance, structure, and finances that could be used to
 5 gain unfair business advantage against them,” *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016
 6 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); documents containing “highly sensitive information
 7 regarding [a party’s] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No.
 8 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); documents in the form
 9 of “emails containing information about [a party’s] business practices, recruitment efforts, and
 10 discussions regarding potential partnerships with other product manufacturers,” *Koninklijke*
 11 *Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14–cv–02737–BLF, 2015 WL 581574, at
 12 *1-2 (N.D. Cal. Dec. 10, 2015); and documents containing “information regarding non-public
 13 recruitment efforts and business practices” of a party, *id.* at *2-3.

14 **5.** Exhibit 10 to the Santacana Declaration is an excerpt of the April 4, 2016
 15 deposition of Kirk Lougheed, which was designated as “Highly Confidential- Attorneys’ Eyes
 16 Only” under the Protective Order in this matter. Cisco submits this declaration in support of
 17 sealing 362:16-371:16 of this deposition excerpt. This narrow section of the deposition excerpt
 18 represents source code from a third party and is related to source code for Cisco products. As
 19 such, there are compelling reasons to seal this paragraph. *See Agency Solutions.Com, LLC v.*
 20 *TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source code is “undoubtedly a
 21 trade secret” within the sealing context.)

22 **6.** Exhibit 11 to the Santacana Declaration is an excerpt of the November 20, 2015
 23 deposition of Kirk Lougheed, which was designated as “Highly Confidential- Attorneys’ Eyes
 24 Only” under the Protective Order in this matter. Cisco submits this declaration in support of
 25 sealing 55:2-56:18 and 157:8–159:17. These narrow sections represent discussion about source
 26 code from a third party as related to Cisco’s products as well as a discussion of the confidential

development of Cisco's product architecture. As such, there are compelling reasons to seal these excerpts. *See Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source code is "undoubtedly a trade secret" within the sealing context); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) ("highly sensitive information regarding [a party's] product architecture and development" are sealable under the heightened standard for dispositive motions.)

7. Exhibit 17 to the Santacana Declaration is an email from Cisco engineer Rajiv Raghunaryan dated December 16, 2002. This email was designated by Cisco as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order in this matter. Exhibit 17 contains a confidential discussion of the development of Cisco's product architecture. As such, compelling reasons exist to seal this exhibit in its entirety. *See Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) ("highly sensitive information regarding [a party's] product architecture and development" are sealable under the heightened standard for dispositive motions.)

8. Cisco does not seek the sealing of exhibits 1-3, 7-9, 16, 18-19, or 22-24 to the Santana Declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Redwood Shores, California, on July 5, 2016.

/s/ Sara E. Jenkins
Sara E. Jenkins